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# BULLETINS OF THE AMERICAN INSTITUTE OF CRIMINAL LAW AND CRIMINOLOGY.

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BULLETIN No. 3, APRIL, 1910.

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## REPORT OF COMMITTEE 2.

(COMMITTEE ON TRANSLATIONS.)

William W. Smithers, of the Philadelphia Bar, secretary of the Comparative Law Bureau of the American Bar Association, *chairman*; Ernst Freund, professor of law in the University of Chicago; Maurice Parmelee, professor of sociology in the State University of Kansas; Roscoe Pound, professor of law in the University of Chicago; Robert B. Scott, professor of law in the State University of Wisconsin; John H. Wigmore, professor of law in Northwestern University.

At the National Conference of Criminal Law and Criminology, held in Chicago in June, 1909, the following resolution was passed:

**WHEREAS**, It is exceedingly desirable that important treatises on criminology in foreign languages be made readily accessible in the English language:

**"Resolved**, That the president appoint a committee of five with power to select such treatises as in their judgment should be translated, and to arrange for their publication."

The committee appointed under this resolution has made careful investigation of the literature of the subject, and has consulted by frequent correspondence. It has selected several works from among the mass of material. It has arranged with publisher, with authors and with translators, for the immediate undertaking and rapid progress of the task. It realizes the necessity of educating the professions and the public by the wide diffusion of information on this subject. It desires to explain the considerations which have moved it in seeking to select the treatises best adapted to the purpose.

For the community at large, it is important to recognize that criminal science is a larger thing than criminal law. The legal profession in particular has a duty to familiarize itself with the principles of that science, as the sole means for intelligent and systematic improvement of the criminal law.

Two centuries ago, while modern medical science was still young, medical practitioners proceeded upon two general assumptions: one as to the cause of disease, the other as to its treatment. As to the cause of disease—disease was sent by the inscrutable will of God. No man could fathom that will, nor its arbitrary operation. As to the treatment of disease, there were believed to be a few remedial agents of universal efficacy. Calomel and blood-letting, for example, were two of the principal ones. A larger or smaller dose of calomel—a greater or less quantity of blood-letting—this blindly indiscriminate mode of treatment was regarded as orthodox for all

## BULLETINS OF THE INSTITUTE.

common varieties of ailment. And so his calomel pill and his blood-letting lancet were carried everywhere with him by the doctor.

Nowadays, all this is past, in medical science. As to the causes of disease, we know that they are facts of nature—various, but distinguishable by diagnosis and research, and more or less capable of prevention or control or counteraction. As to the treatment, we now know that there are various specific modes of treatment for specific causes or symptoms, and that the treatment must be adapted to the cause. In short, the individualization of disease, in cause and in treatment, is the dominant truth of modern medical science.

The same truth is now known about crime; but the understanding and the application of it are just opening upon us. The old and still dominant thought is, as to cause, that a crime is caused by the inscrutable moral free will of the human being, doing or not doing the crime, just as it pleases; absolutely free in advance, at any moment of time, to choose or not to choose the criminal act, and therefore in itself the sole and ultimate cause of crime. As to treatment, there still are just two traditional measures, used in varying doses, for all kinds of crime and all kinds of persons—jail, or a fine (for death is now employed in rare cases only). But modern science, here as in medicine, recognizes that crime also (like disease) has natural causes. It need not be asserted for one moment that crime is a disease. But it does have natural causes—that is, circumstances which work to produce it in a given case. And as to treatment, modern science recognizes that penal or remedial treatment cannot possibly be indiscriminate and machine-like, but must be adapted to the causes, and to the man as affected by those causes. Common sense and logic alike require, inevitably, that the moment we predicate a specific cause for an undesirable effect, the remedial treatment must be specifically adapted to that cause.

Thus the great truth of the present and the future, for criminal science, is the individualization of penal treatment—for that man, and for the cause of that man's crime.

Now this truth opens up a vast field for reëxamination. It means that we must study all the possible data that can be causes of crime,—the man's heredity, the man's physical and moral makeup, his emotional temperament, the surroundings of his youth, his present home, and other conditions—all the influencing circumstances. And it means that the effect of different methods of treatment, old or new, for different kinds of men and of causes, must be studied, experimented, and compared. Only in this way can accurate knowledge be reached, and new efficient measures be adopted.

All this has been going on in Europe for forty years past, and in limited fields in this country. All the branches of science that can help have been working—anthropology, medicine, psychology, economics, sociology, philanthropy, penology. The law alone has abstained. The science of law is the one to be served by all this. But the public in general, and the legal profession in particular, have remained either ignorant of the entire subject or indifferent to the entire scientific movement. And its ignorance or indifference has blocked the way to progress in administration.

The Institute, therefore, takes upon itself, as one of its aims, to inculcate the study of modern criminal science, as a pressing duty for the legal pro-

## TRANSLATIONS OF FOREIGN TREATISES.

fession and for the thoughtful community at large. One of its principal modes of stimulating and aiding this study is to make available in the English language the most useful treatises now extant in the continental languages. Our country has started late. There is much to catch up with, in the results reached elsewhere. We shall, to be sure, profit by the long period of argument and theorizing and experimentation which European thinkers and workers have passed through. But to reap that profit, the results of their experience must be made accessible in the English language.

The effort, in selecting this series of translations, has been to choose those works which best represent the various schools of thought in criminal science, the general results reached, the points of contact or of controversy, and the contrasts of method—having always in view that class of works which have a more than local value and could best be serviceable to criminal science in our country. As the science has various aspects and emphases—the anthropological, psychological, sociological, legal, statistical, economic, pathological—due regard was paid, in the selection, to a representation of all these aspects. And as the several continental countries have contributed in different ways to these various aspects—France, Germany, Italy, most abundantly, but the others each its share—the effort was made also to recognize the different contributions as far as feasible.

The selection made by the committee, then, represents their judgment of the works that are most useful and most instructive for the purpose of translation. It is their conviction that this series, when completed, will furnish the American student of criminal science a systematic and sufficient acquaintance with the controlling doctrines and methods that now hold the stage of thought in Continental Europe. Which of the various principles and methods will prove best adapted to help our problems can only be told after our students and workers have tested them in our own experience. But it is certain that we must first acquaint ourselves with these results of a generation of European thought.

The list of works selected for translation is fully described in the publisher's circular of the series, enclosed herewith; the committee thought it unnecessary to duplicate the list in the text of this report.

In closing, the committee thinks it desirable to refer the members of the Institute, for purposes of further investigation of the literature, to the "Preliminary Bibliography of Modern Criminal Law and Criminology" (Bulletin No. 1 of the Gary Library of Law of Northwestern University), already issued to members of the Conference. The committee believes that some of the Anglo-American works listed therein will be found useful; and particularly cites (without his consent) a recent work by one of its members, Mr. Parmelee's "Principles of Anthropology and Sociology in Their Relations to Criminal Procedure" (New York, 1908).

## BULLETINS OF THE INSTITUTE.

### THE MODERN CRIMINAL SCIENCE SERIES.

#### DESCRIPTIVE LIST OF WORKS TO BE EMBRACED IN THE SERIES.

##### NOW UNDER TRANSLATION.

- I. CRIMINAL PSYCHOLOGY. By *Hans Gross*. Translated from the Second German Edition by *Dr. Horace M. Kallen*, Assistant in Philosophy in Harvard University. With an American Preface by the Author, and an Introduction by *Joseph Jastrow*, Professor of Psychology in the University of Wisconsin, Delegate to the National Conference on Criminal Law and Criminology, 1909. 8vo. Cloth, \$5.00 net. (Ready in May.)

Professor Gross is one of the half-dozen most eminent European students of criminal science. He has been a criminal magistrate, and is now professor of criminal law at Graz, Austria. He is editor of the "Archives of Criminal Anthropology and Criminalistics," published at Leipzig; and has published numerous books and essays, including a Handbook for Criminal Magistrates (translated into French, Italian and English). He was one of the first to study the psychological methods of crime-detection described afterward in this country by Professor Münsterberg.

*From the Author's Preface to the American Edition of Criminal Psychology.*

"The present work is the first really objective criminal psychology which dealt with the mental state of judges, experts, jury, witnesses, etc., as well as the mental states of criminals. And a study of the former is just as needful as a study of the latter. The need has fortunately since been recognized, and several studies of special topics treated in the book—e. g., depositions of witnesses, perception, the pathologic lie, superstition, probability, sensory illusions, inference, sexual differences, etc.—have become the subjects of a considerable literature, referred to in the second edition of this book.

"I agreed with much pleasure to the proposition of the American Institute of Criminal Law and Criminology to have the book translated. I am proud of the opportunity to address Americans and Englishmen in their language. . . . I can only hope that the translation will justify itself by its usefulness to the legal profession."

- II. MODERN THEORIES OF CRIMINOLOGY. By *Bernaldo de Quiros*, of Madrid. Translated from the Second Spanish Edition by *Dr. Alphonse de Salvio*, professor of Romance Languages in Northwestern University. With an American Preface by the Author, and an Introduction by *W. W. Smithers, Esq.*, of Philadelphia, Chairman of the Translation Committee of the American Institute of Criminal Law and Criminology, Secretary of the Comparative Law Bureau of the American Bar Association. 8vo. Cloth, \$4.00 net. (Ready in October.)

Señor de Quiros is one of the most eminent of modern Spanish criminologists. He has edited a "Library of Penal Science," and has written another treatise on "Crimes of Violence in Spain." The present work is a concise survey of all the European writers on criminal science during the last century. Several hundred are passed in review. It sums up the contributions of each one, aligns the respective schools of thought, and critically places each writer and each theory. It is the best reference handbook for learning the significance of each worker.

## TRANSLATIONS OF FOREIGN TREATISES.

- III. CRIMINAL SOCIOLOGY. By *Enrico Ferri*, Member of the Roman Bar, and Professor of Criminal Law and Procedure in the University of Rome, Editor of the Archives of Psychiatry and Penal Science, the Positivist School in Penal Theory and Practice, etc. Translated from the Fourth Italian and Second French Editions by *Joseph I. Kelly*, formerly Lecturer on Roman Law in Northwestern University and Dean of the Faculty of Law in the University of Louisiana. With an American Preface by the Author, and an Introduction by *Charles A. Ellwood*, Professor of Sociology in the University of Missouri. 8vo. Cloth, \$5.00 net. (Ready in 1911.)

Professor Ferri began as a pupil of Lombroso, but later accepted a sociological basis for his views. He is a member of the Italian Parliament, and has been for thirty years an eminent advocate at the criminal bar. He is the author of a long list of books and essays, many of them translated into French and Spanish. He is a recognized leader in his school of thought, which has exercised an important influence throughout Europe.

- IV. THE INDIVIDUALIZATION OF PUNISHMENT. By *Raymond Saleilles*, Professor of Comparative Law at the University of Paris, Editor of the Quarterly Review of Civil Law, etc. Translated from the Second French Edition by *Rachel Szold Jastrow*, of Madison, Wis. 8vo. Cloth, \$4.50 net. (Ready in 1911.)

Professor Saleilles is one of the most brilliant jurists in France. His recent special work has been a Commentary on the New German Code; but he formerly devoted much thought to criminal law, and his work on the Individualization of Punishment was received with emphatic approval and has lately gone into a second edition. It has been regarded by many as the clearest statement ever made of the practical relation between modern criminal science and the existing criminal law.

- V. CRIME, ITS CAUSES AND REMEDIES. By *Cesare Lombroso*, late Professor of Psychiatry and Legal Medicine in the University of Turin, Author of "The Delinquent Man," etc., Founder and Editor of the Archives of Psychiatry and Penal Sciences. Translated from the German Edition of *Dr. H. G. Kurella* and *Dr. H. Jentsch*, by *Henry P. Horton, B.D., Ph.D.*, of Columbia, Mo. 8vo. Cloth, \$4.50 net. (Ready in 1911.)

The name of Lombroso is already universally known to Americans. His influence in European thought was such that no series of translations could fail to represent his work. His first and largest treatise, "The Delinquent Man," last edited in 1897, in four volumes, is too large and diffuse to admit of translation. The work here selected is his latest general survey of the subject, and therefore represents, presumably, his latest views. It appeared originally in French in 1899, and was translated into German in 1902 by his German champion, Dr. Kurella.

- VI. PENAL PHILOSOPHY. By *Gabriel Tarde*, late Magistrate in Sarlat, Professor of Modern Philosophy in the College of France, and Lecturer in the Paris School of Political Science. Translated from the Fourth French Edition by *Rachel Szold Jastrow*, of Madison, Wis. 8vo. Cloth, \$5.00 net.

The late Gabriel Tarde, long a criminal magistrate and a lecturer on political science at the University of Paris, was acknowledged to be a legal philosopher of the first rank. His various notable works, "The Transformations of Law," "Public Opinion and the Crowd," and "Sociological Essays," reached out into general social psychology. But criminal psychology and

## BULLETINS OF THE INSTITUTE.

penal philosophy remained his first interest, as seen in his "Underground Man" and "Comparative Criminality." In the present work he stands out as perhaps the most creative thinker of contemporary France in criminal philosophy.

VII. CRIMINALITY AND ECONOMIC CONDITIONS. By *W. A. Bongers*, Doctor in Law of the University of Amsterdam. Translated from the French Edition of 1905. 8vo. Cloth, \$5.50 net.

Dr. Bongers is one of the younger criminalists, a pupil of Professor Van Hamel, the most eminent of the Dutch leaders in that field. His treatise is one of the few that gives special attention to the science of criminal statistics; and another uniquely useful feature is that the first half of the book sets forth, in extracts, the theories, methods, and results of all prior writers dealing with the subject.

### PROVISIONALLY SELECTED FOR TRANSLATION.

VIII. CRIMINOLOGY. By *Raffaello Garofalo*, late President of the Court of Appeals of Naples. Translated from the First Italian and the Fifth French Editions. 8vo. Cloth, \$4.50 net.

Baron Garofalo, who died a few years ago, was an eminent magistrate. His name, and those of Lombroso and Ferri, form the trinity of Italian leaders of thought in this field. Garofalo's principles are original and unique. They give special elaboration to the ethical and legal elements. They are advanced in their nature; but many believe that they point far ahead to inevitable outcomes. No philosopher of penal law can afford to ignore their claims.

IX. CRIME AND ITS REPRESSION. By *Gustav Aschaffenburg*, Professor of Psychiatry in the Academy of Practical Medicine at Cologne. Translated from the Second German Edition. 8vo. Cloth, \$4.00 net.

Professor Aschaffenburg has long occupied a foremost place among students of criminal psychology and sociology. He is the principal editor of the *Monthly Journal of Criminal Psychology and Criminal Law Reform*, published at Heidelberg, and is a joint author of a *Handbook of Legal Psychiatry*. His "Crime and Its Repression" was first published in 1903, and went speedily into a second edition. It surveys concisely the whole field of data and methods, and gives special chapters to statistics and practical measures. It represents the best and latest German results.

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